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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

**ALLIANCE FOR THE WILD
ROCKIES,**

Plaintiff,

v.

U.S. FOREST SERVICE, an agency
within the U.S. Department of Agriculture.

Defendant.

CV-

**COMPLAINT FOR
DECLARATORY and
INJUNCTIVE RELIEF**

Freedom of Information Act

I. INTRODUCTION

1. Plaintiff Alliance for the Wild Rockies (Alliance) brings this action under the Freedom of Information Act, 5 U.S.C. § 552 et seq. (FOIA) for declaratory, injunctive and other appropriate relief to enjoin Defendant from withholding requested documents and require that Defendant produce those documents.
2. Defendant violated the FOIA by failing to respond to Plaintiff's FOIA request with a determination within the deadline established by the FOIA, as well as by failing to produce requested documents, and failing to assign a tracking number for Plaintiff's request. This action seeks the following: (1) an order declaring that Defendant acted illegally by failing to respond to Plaintiff's FOIA request in the time period allowed by statute; (2) an order declaring that Defendant acted illegally by failing to produce the requested documents; (3) an order enjoining Defendant from withholding the requested documents and requiring Defendant to produce the requested documents; and (4) an order requiring Defendant to pay the expenses of this action, including Plaintiff's costs and reasonable attorney fees.

II. JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court

also has jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) (federal question).

4. Venue in this District is proper under 5 U.S.C. § 552(a)(4)(B) because “the complainant resides” in this District.
5. Declaratory relief is appropriate under 28 U.S.C. § 2201. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. 552(a)(4)(B).
6. This Court has the authority to award costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

III. PARTIES

7. Plaintiff ALLIANCE FOR THE WILD ROCKIES (Alliance) is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. Members of the Alliance observe, enjoy, and appreciate Montana’s native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future. Alliance’s members’ interests are directly affected by Defendant’s failure to respond to requests for, and disclose, information regarding wildlife management.

8. Defendant UNITED STATES FISH & WILDLIFE SERVICE (FWS or Defendant) is an agency of the United States Department of Interior. FWS is the agency in possession and control of the records sought by Plaintiff, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(e). FWS has a statutory duty to respond to Plaintiff's information requests, and disclose the requested records. 5 U.S.C. § 552 (a)(6)(A).

IV. FACTUAL AND LEGAL BACKGROUND

9. On December 20, 2018, Plaintiff sent a FOIA request to Defendant via email *See* Exhibit 1 (FOIA Request).
10. Plaintiff's FOIA request states in part:

December 20, 2018
Heather Degeest, Ranger
Helena National Forest
2880 Skyway Drive
Helena, MT 59601-1230

RE: FOIA for project file for the Ten Mile-South Helena Project
file

Dear Ranger Degeest:

Pursuant to the federal Freedom of Information Act (5 U.S.C. 552 et. seq.), the Alliance the Wild Rockies, Inc. is filing this request for information. The Alliance for the Wild Rockies is a 501(c) (3) non-profit, public interest, public education organization.

I would like an electronic copy of the project file for the Ten Mile-South Helena Project file and would prefer the electronic copy on a USB flash drive (Thumb drive).

Exhibit 1.

11. The Forest Service did not respond in writing to this request and did not provide a tracking number for this request.
12. On January 31, 2019, Plaintiff's Executive Director, Michael Garrity, received a phone call from Ashley Snellman, Helena National Forest. She stated that USFS received the FOIA request on December 21, 2018. Ms. Snellman requested an additional 20 days, excluding holidays and weekends, to respond. *See* Exhibit 2 (Correspondence with USFS).
13. Plaintiff sent USFS a written response declining to allow an additional 20 days, excluding holidays and weekends, to respond. However, in the interest of compromise, Plaintiff agreed to an additional 10 days, excluding holidays and weekends, to respond. In relevant part, the response states:

January 31, 2019

Dear Ranger Degeest;

I sent the FOIA request below on December 20, 2018. On January 31, 2019, I received a phone call from Ashley Snellman, Helena National Forest. She stated that USFS received the FOIA request below on December 21, 2018.

The FOIA statute provides 20 days to respond, excluding holidays and weekends. Therefore, the FOIA response was due on January 23, 2019. I did not receive a response by the deadline.

On January 31, 2019, Ms. Snellman requested an additional 20 days, excluding holidays and weekends, to respond.

I decline to agree to an additional 20 days, excluding holidays and weekends, to respond. The FOIA statute does allow an additional 10 days, excluding holidays and weekends, to respond in certain circumstances that do not appear to be present here. Nonetheless, in the interest of compromise, I will agree to a 10-day extension of the deadline. This means the deadline for the FOIA response is now February 6, 2019.

Exhibit 2.

14. USFS did not respond to this correspondence and did not provide responsive documents to this FOIA request by February 6, 2019.
15. As of the filing of this Complaint, on February 8, 2019, Plaintiff has not received responsive documents to this FOIA request.
16. FOIA requires that an agency determine whether to comply with a request for documents within 20 days of receipt of the request, excluding holidays and weekends. If the agency determines not to disclose documents to a requester, it must inform the requester of its decision and inform the requester, at that time, how to appeal the agency's decision. 5 U.S.C. § 552((a)(6)(A)(i).

17. The statutory deadline for Defendant to respond with a determination for the FOIA request in this case, i.e. 20 days from receipt of the request, excluding holidays and weekends, was January 23, 2019.
18. Defendant did not respond with a determination by January 23, 2019.
19. The FOIA allows 10 additional days, excluding holidays and weekends, for a determination if the component of the agency that receives the FOIA request is not “the appropriate component of the agency,” and must forward the request to the appropriate component of the agency.
20. If that exception applies, the deadline for Defendant’s determination to Plaintiff’s FOIA request was February 6, 2019.
21. Defendant did not respond with a determination by February 6, 2019.
22. As of the date of the filing of this Complaint, Plaintiff has not received a determination on its FOIA request or any of the requested documents.
23. Moreover, as of the date of the filing of this Complaint, USFS has failed to provide a tracking number for Plaintiff’s FOIA request.
24. Plaintiff is directly and adversely affected by Defendant’s failure to respond and provide all responsive records and documents for its FOIA request.

25. Plaintiff is “deemed to have exhausted [its] administrative remedies” because Defendants “fail[ed] to comply with the applicable time limit provisions” of the FOIA. 5 U.S.C. § 552(a)(6)(C)(I).
26. Plaintiff has been required to expend costs and retain legal representation to prosecute this action.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Defendant violated FOIA by failing to issue a determination for Plaintiff’s FOIA Request by the statutory deadline.

27. Plaintiff incorporates all previous paragraphs by reference.
28. Defendant violated FOIA’s requirement that an administrative agency must respond to a FOIA request within 20 days, excluding holidays and weekends, with a substantive determination that notifies the requester whether the agency will comply with the request, the scope of the documents the agency will produce, whether any exemptions are being claimed to deny any part of the request, and how to appeal an adverse determination. 5 U.S.C. § 552(a)(6)(A)(I).
29. Additionally, if the 10 day extension applies, Defendants have also violated that deadline.

30. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SECOND CLAIM FOR RELIEF

Defendant violated FOIA by failing to make requested records promptly available to Plaintiff.

31. Plaintiff incorporates all previous paragraphs by reference.
32. Defendant violated FOIA because its failure to provide the documents requested by Plaintiff violated the FOIA requirement that every administrative agency “make the records promptly available to any person” who requests records from an administrative agency. 5 U.S.C. § 552(a)(3)(A).
33. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

THIRD CLAIM FOR RELIEF

Defendant violated FOIA by failing to assign and provide Plaintiff with a tracking number for Plaintiff’s request, and failing to provide Plaintiff with the telephone line number or Internet service address wherein Plaintiff can receive information about the status of its request.

34. Plaintiff incorporates all previous paragraphs by reference.
35. FOIA mandates:

Each agency shall [] establish a system to assign an individualized tracking number for each request received that

will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and [] establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including []the date on which the agency originally received the request; and [] an estimated date on which the agency will complete action on the request.

5 U.S.C. § 552(a)(7).

36. Defendant failed to comply with this provision by failing to provide Plaintiff with an individualized tracking number for its request.
37. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

VI. REQUEST FOR RELIEF

THEREFORE, Plaintiff requests that this Court enter judgment providing the following relief:

- A. Declare that Defendant violated FOIA by failing to issue a determination for Plaintiff's FOIA request in accordance with the statutory deadline;
- B. Declare that Defendant violated FOIA by failing to promptly produce the documents requested in Plaintiff's FOIA request;

- C. Declare that Defendant violated FOIA by failing to assign a tracking number, linked to a telephone or internet system for status updates, to Plaintiff's request;
- D. Enjoin Defendant from withholding the requested records, and order Defendant to immediately provide the requested records to Plaintiff;
- E. Award Plaintiff its reasonable costs, litigation expenses and attorneys' fees as provided by 5 U.S.C. § 552(a)(4)(E); and
- F. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 8th Day of February, 2019.

/s/ Rebecca K. Smith

Rebecca K. Smith

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Attorneys for Plaintiff